

## **MONTANA CREDIT UNION ACT**

**32-3-101. Short title.** This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

**32-3-102. Definition and purposes.** A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

**32-3-103. Use of name exclusive.** (1) The name of any credit union organized under this chapter must include the phrase "credit union". A credit union may not adopt a name either identical to the name of any other credit union doing business in this state or so similar as to be misleading or to cause confusion.

(2) A person, other than a credit union organized under the provisions of this chapter or of any other credit union act or an organization or corporation whose membership or ownership is primarily limited to credit unions or credit union organizations, may not use a name or title containing the words "credit union" or any derivation of the words "credit union", and the person may not represent that the person is a credit union and may not conduct business as a credit union.

(3) A person who violates a provision of this section shall be fined not more than \$500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from further violation of the provisions of this section.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606; amd. Sec. 1, Ch. 237, L. 2003.

**32-3-104. Office facilities.** (1) A credit union may change its place of business within this state upon written notice to the department of administration.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union must be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing is to determine whether a compelling reason exists for disapproval of the additional office.

History: En. 14-607 by Sec. 7, Ch. 38, L. 1975; R.C.M. 1947, 14-607; amd. Sec. 1, Ch. 140, L. 1981; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 83, Ch. 483, L. 2001.

**32-3-105. Fiscal year.** The fiscal year of each credit union organized under this chapter shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38, L. 1975; R.C.M. 1947, 14-608.

**32-3-106. Instruction in schools** -- establishment of a student financial institution. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state, and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701, may establish a school financial institution, as defined in 32-1-115.

History: En. 14-675 by Sec. 75, Ch. 38, L. 1975; R.C.M. 1947, 14-675; amd. Sec. 5, Ch. 340, L. 2003.

**32-3-201. Department of administration.** (1) The department of administration shall administer the laws of this state relating to credit unions. The department may appoint or employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of administering or enforcing this chapter.

(2) The department may adopt rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The department shall adopt rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

(4) The department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a credit union is organized and the state or states in which the credit union's branches may be located.

History: En. 14-609 by Sec. 9, Ch. 38, L. 1975; R.C.M. 1947, 14-609; amd. Sec. 5, Ch. 600, L. 1985; amd. Sec. 84, Ch. 483, L. 2001; amd. Sec. 4, Ch. 237, L. 2003.

**32-3-202. Reports.** (1) Credit unions organized under this chapter shall report to the department of administration annually on or before February 1 on forms supplied by the department for that purpose. Additional reports may be required.

(2) A fine of \$5 for each day a report is in arrears must be levied against the offending credit union unless it is excused for cause by the department.

History: En. 14-610 by Sec. 10, Ch. 38, L. 1975; R.C.M. 1947, 14-610; amd. Sec. 5, Ch. 237, L. 2003.

**32-3-203. Examinations.** (1) The department of administration shall examine or cause to be examined each credit union on a schedule determined by the department. Each credit union and all of its officers and agents shall give representatives of the department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination, the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an examination of a credit union, the department may accept an audit report of the condition of the credit union made by an auditor approved by the department. The cost of the audit must be borne by the credit union.

History: En. 14-611 by Sec. 11, Ch. 38, L. 1975; R.C.M. 1947, 14-611; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 85, Ch. 483, L. 2001; amd. Sec. 1, Ch. 64, L. 2003; amd. Sec. 6, Ch. 237, L. 2003.

**32-3-204. Records.** (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules that the department of administration prescribes. In prescribing rules, the department shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the department.

(3) A photostatic or photographic copy or reproduction of any kind, including electronic or computer-generated data that has been electronically

stored and is capable of being converted into written form, of any credit union records is admissible as evidence of transactions with the credit union.

History: En. 14-612 by Sec. 12, Ch. 38, L. 1975; R.C.M. 1947, 14-612; amd. Sec. 1, Ch. 25, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001; amd. Sec. 7, Ch. 237, L. 2003.

**32-3-205. Cease and desist orders -- suspension -- involuntary liquidation.** (1) The department of administration may issue cease and desist orders after having determined, from competent and substantial evidence, that a credit union:

- (a) is engaged or is about to engage in an unsafe or unsound practice; or
- (b) is violating or has violated a material provision of any law, rule, or condition imposed in writing by the department or any written agreement made with the department.

(2) (a) The department may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, or committee member who has committed any violation of a law, rule, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice that constitutes a breach of that person's fiduciary duty as a director, officer, or committee member when the department has determined that:

- (i) the action of the director, officer, or committee member has resulted or will likely result in substantial financial loss or other damage;
- (ii) the interests of the credit union's members have been or may be prejudiced by the action of the director, officer, or committee member;
- (iii) the director, officer, or committee member has received financial gain or other benefit as a result of the action; or
- (iv) the action of the director, officer, or committee member involves personal dishonesty or demonstrates unfitness to serve as a director, officer, or committee member.

(b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a) may request a hearing under the Montana Administrative Procedure Act.

(3) (a) If it appears that a credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the department may issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors must be given notice by certified mail of the suspension. The notice must include a list of the reasons for the suspension and a list of the specific violations of this chapter.

(b) Upon receipt of a suspension notice, the credit union shall cease all operations, except those authorized by the department, or the department may appoint a conservator to operate the credit union during the period of

suspension. The board of directors shall file with the department a reply to the suspension notice and present a plan of proposed corrective actions if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected or upon acceptance of a plan of proposed corrective actions, the department may revoke the suspension notice and permit the credit union to resume normal operations.

(d) If the department, after issuing a notice of suspension, rejects the credit union's plan to continue operations, the board may request an administrative hearing.

(4) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing or if after a hearing, the department continues to reject the credit union's plan to continue operations, the department may:

(a) permit the credit union to operate under a conservator until conditions requiring suspension are remedied;

(b) involuntarily merge the credit union in accordance with the provisions of 32-3-212; or

(c) revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

(5) The department may not involuntarily merge or involuntarily liquidate a credit union prior to the suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the department's suspension, involuntary merger, or involuntary liquidation order.

(6) In the event of liquidation of a credit union, the assets of the credit union or the proceeds from the disposition of the credit union's assets must be applied and distributed in the following sequence:

(a) to secured creditors up to the value of their secured collateral;

(b) for the costs and expenses of liquidation;

(c) for wages due employees of the credit union;

(d) for taxes owed to any government unit;

(e) for any debts owed the United States;

(f) to general creditors and to secured creditors to the extent that their claims exceed the value of their collateral; and

(g) to shareholders of the credit union to the extent of their uninsured shares.

History: En. 14-664 by Sec. 64, Ch. 38, L. 1975; R.C.M. 1947, 14-664; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 86, Ch. 483, L. 2001; amd. Sec. 8, Ch. 237, L. 2003.

**32-3-206. Authorized activities of credit unions.** Upon written application to the department of administration, a credit union may engage in any activity in which a credit union could engage if it were operating as a federal

chartered credit union at the time the authority is granted. The activities include but are not limited to the power to do any act and to own, possess, and carry as assets property including stocks, bonds, or other debentures that, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions and are not subject to any restrictions contained elsewhere in Montana law. However, the department may not charter a credit union not having a common bond of membership as defined in 32-3-304. The department shall approve an activity if it finds that the activity fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the department disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676; amd. Sec. 1, Ch. 522, L. 1985; amd. Sec. 12, Ch. 237, L. 2003.

**32-3-207. Confidentiality -- penalties.** (1) (a) Any report of examination issued under 32-3-203, any report made by a credit union under 32-3-202, and any other credit union documentation maintained by the department of administration, other than those reports that are required to be published, must be considered confidential information. The information may not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal credit union regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information may be used by the department only in the furtherance of its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a credit union is guilty of a felony and must be removed from office. Upon conviction, the person shall be fined an amount not exceeding \$1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

History: En. Sec. 11, Ch. 237, L. 2003.

**32-3-208 through 32-3-210 reserved.**

**32-3-211. Conservatorship.** (1) In conjunction with a suspension order or if the department of administration's examination has been obstructed or impeded, the department may appoint itself or appoint any other competent person as conservator to immediately take possession and control of the business and assets of a credit union. The conservator, representing the best interest of the credit union members, must be vested with the full power of management of the credit union.

(2) Not later than 15 days after the date on which the conservator takes possession and control of the business and assets of a credit union pursuant to subsection (1), the credit union may apply to the appropriate court for an order requiring the department to show cause why the department or the designated conservator should not be enjoined from continuing possession and control.

(3) Except as provided in subsection (2), the conservator may maintain possession and control of the business and assets of the credit union and may operate the credit union until:

(a) the department permits the credit union's officials to continue business subject to any terms and conditions the department imposes; or

(b) the credit union is involuntarily merged or involuntarily liquidated in accordance with the provisions of 32-3-205.

(4) The department may appoint any agents considered necessary to assist the conservator in carrying out the duties of the conservator under this section.

(5) All expenses incurred by the conservator in exercising the authority of that office under this section with respect to a credit union must be paid out of the assets of the credit union, except that the department may waive all or a part of the expenses.

History: En. Sec. 9, Ch. 237, L. 2003.

Compiler's Comments:

Effective Date: This section is effective October 1, 2003.

**32-3-212. Involuntary merger.** The department of administration may initiate the involuntary merger of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent or in danger of insolvency if the department is satisfied that:

(1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent or in danger of insolvency;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of the merger, purchase, or assumption.

History: En. Sec. 10, Ch. 237, L. 2003.

**32-3-213 and 32-3-214 reserved.**

**32-3-215. Out-of-state credit unions.** (1) A credit union chartered under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the department of administration, provided that credit unions incorporated under this chapter are allowed to do business in the other state or territory under conditions similar to these provisions.

(2) Before granting approval to do business in this state, the department must find that an out-of-state credit union:

- (a) is a credit union organized under laws similar to this chapter;
- (b) is financially solvent;
- (c) has account insurance comparable to that required for credit unions incorporated under this chapter;
- (d) is examined and supervised by a regulatory agency of the state in which it is organized; and
- (e) needs to conduct business in this state to adequately serve its members in this state.

(3) An out-of-state credit union may not conduct business in this state unless it:

- (a) complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;
- (b) agrees to furnish the department with a copy of the examination report conducted by its regulatory agency or to submit to an examination by the department; and
- (c) designates and maintains an agent for the service of process in this state.

(4) The department may revoke the approval of an out-of-state credit union conducting business in this state if the department finds that:

- (a) the credit union no longer meets the requirements of subsection (2);
- (b) the credit union has violated the laws of this state or lawful rules or orders issued by the department;
- (c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;
- (d) continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic, or other interests of residents of this state; or
- (e) the credit union is prohibited from operating in its own home state.

History: En. Sec. 2, Ch. 237, L. 2003.

**32-3-216. Conducting business outside this state.** (1) A credit union chartered under this chapter may conduct business outside of this state in other states or territories where it is permitted to conduct business as a credit union, under conditions substantially similar to the provisions of this chapter.

(2) If another state or territory's credit union laws or regulations allow credit unions operating in that state or territory to exercise additional powers not allowed in this state, the credit union conducting business outside this state may request permission from the department of administration to exercise those additional powers while operating in that state.

(3) Upon request for approval to exercise a power not allowed in this state, submitted by certified mail, return receipt requested, the department shall respond with a determination in not more than 60 days. For good cause shown within the 60-day period, the department may extend the response period for an additional 30 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit union may exercise the power.

History: En. Sec. 3, Ch. 237, L. 2003.

**32-3-301. Organization procedure.** (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words "credit union" and which must conform with the provisions of 32-3-103, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which must be in \$5 multiples of not less than \$5 or more than \$25;

(d) that the credit union is organized under this chapter for the purposes set forth in the articles;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than \$5; and

(f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the bylaws in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee if the bylaws provide for a supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be

executed by the parties. This agreement must be submitted to the department of administration.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the department. The department may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the department is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The department shall return to the applicants or their representatives a copy of the bylaws and the articles, which must be preserved in the permanent files of the credit union. The application must be acted upon within 30 days. The articles of incorporation must be filed with the secretary of state who, upon payment of the fees for filing the articles, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

(7) If the department denies a certificate of approval, the subscribers may request a hearing under the Montana Administrative Procedure Act.

History: En. 14-603 by Sec. 3, Ch. 38, L. 1975; R.C.M. 1947, 14-603; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 25, L. 2001; amd. Sec. 87, Ch. 483, L. 2001; amd. Sec. 13, Ch. 237, L. 2003.

**32-3-302. Form of articles and bylaws.** In order to simplify the organization of credit unions, the department of administration shall prepare a form of articles of incorporation and a form of bylaws, consistent with this chapter, that may be used by credit union incorporators for their guidance. The articles of incorporation and bylaws must be available without charge to persons desiring to organize a credit union.

History: En. 14-604 by Sec. 4, Ch. 38, L. 1975; R.C.M. 1947, 14-604; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 88, Ch. 483, L. 2001; amd. Sec. 14, Ch. 237, L. 2003.

**32-3-303. Amendments.** (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws must be submitted, by certified mail, return receipt requested, to the department of administration, which shall approve or disapprove the amendments within 60 days.

(2) Amendments become effective upon:

(a) approval in writing by the department, for which a fee may not be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

(3) If the department does not approve or disapprove the amendments within the 60-day period, the amendments must be considered approved, except that the department may extend the approval period for an additional 30 days

for good cause as stated in a written notice given to the credit union within the original 60-day period.

History: En. 14-605 by Sec. 5, Ch. 38, L. 1975; amd. Sec. 32, Ch. 71, L. 1977; R.C.M. 1947, 14-605; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 89, Ch. 483, L. 2001; amd. Sec. 15, Ch. 237, L. 2003.

**32-3-304. Membership defined.** (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests or groups within a well-defined neighborhood, community, or rural district or employees of a common employer and members of the immediate family of such persons.

History: En. 14-615 by Sec. 15, Ch. 38, L. 1975; R.C.M. 1947, 14-615; amd. Sec. 1, Ch. 107, L. 1981.

**32-3-305. Societies -- associations.** (1) Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals.

(2) No loan may be made to any member society, partnership, or corporation in an aggregate amount that is in excess of 5% of the credit union's shares and retained earnings. Total loans to member societies, partnerships, and corporations is limited to an aggregate amount of 15% of the credit union's shares and retained earnings.

History: En. 14-616 by Sec. 16, Ch. 38, L. 1975; R.C.M. 1947, 14-616; amd. Sec. 2, Ch. 522, L. 1985.

**32-3-306. Other credit unions.** Any credit union organized under this chapter may permit membership of any other credit union organized under this chapter or other laws.

History: En. 14-617 by Sec. 17, Ch. 38, L. 1975; R.C.M. 1947, 14-617.

**32-3-307. Limited-income persons.** Existing credit unions may include within their field of membership limited-income persons, as defined by the department of administration, for whom credit union services are otherwise unavailable.

History: En. 14-618 by Sec. 18, Ch. 38, L. 1975; R.C.M. 1947, 14-618; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 90, Ch. 483, L. 2001; amd. Sec. 16, Ch. 237, L. 2003.

**32-3-308. Members who leave field.** Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

History: En. 14-619 by Sec. 19, Ch. 38, L. 1975; R.C.M. 1947, 14-619.

**32-3-309. Liability of members.** The members of the credit union shall not be personally or individually liable for the payment of its debts.

History: En. 14-620 by Sec. 20, Ch. 38, L. 1975; R.C.M. 1947, 14-620.

**32-3-310. Meetings of members.** (1) The annual meeting and any special meetings of the members of the credit union must be held at the time, place, and in the manner indicated by the bylaws.

(2) At all meetings a member has only one vote, irrespective of the member's shareholdings. A member may not vote by proxy, but a member may vote by absentee ballot or mail ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided that the person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

History: En. 14-621 by Sec. 21, Ch. 38, L. 1975; R.C.M. 1947, 14-621; amd. Sec. 17, Ch. 237, L. 2003.

**32-3-311 through 32-3-320 reserved.**

**32-3-321. Liquidation.** (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the presiding officer of the board shall notify the department of administration in writing, setting forth the reasons for the proposed action and a plan for liquidation. Within 10 days after the members act on the question of liquidation, the presiding officer of the board shall notify the department in writing as to whether or not the members approved the proposed liquidation.

(4) Depending on the credit union's circumstances, a liquidation plan may or may not require the suspension of payment on shares, withdrawal of shares, transfer of shares to loans and interest, investments of any kind, new loans, or other similar financial transactions pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions must be permanently discontinued. Necessary expenses of operation must continue to be paid on authorization of the liquidating agent or committee during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each member, by first-class mail, at least 10 days prior to the meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as required by this chapter.

(7) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

(9) As soon as the liquidating agent or committee determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the liquidating agent or committee shall execute a certificate of dissolution on a form prescribed by the department. The form, together with all pertinent books and records of the liquidating credit union, must be filed with the department and the secretary of state. Upon filing with both entities, the credit union is dissolved.

(10) If the department determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of this chapter, the department may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The department shall fill any vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to function of the liquidating agent.

History: En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977; R.C.M. 1947, 14-665; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 91, Ch. 483, L. 2001; amd. Sec. 18, Ch. 237, L. 2003.

**32-3-322. Merger.** (1) Any credit union may, with the approval of the department of administration, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for that purpose.

(2) After agreement by each board of directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of the following:

(a) the time and place of the meeting of each board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) The certificate and a copy of the plan of merger agreed upon must be forwarded to the department, certified by the department, and returned to both credit unions within 30 days. A copy of the certificate of merger and certified plan must be filed with the secretary of state by the surviving credit union.

(4) Upon return of the certificate from the department, all property rights and members' interest of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact.

(5) This section must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law.

History: En. 14-666 by Sec. 66, Ch. 38, L. 1975; R.C.M. 1947, 14-666; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 92, Ch. 483, L. 2001; amd. Sec. 19, Ch. 237, L. 2003.

**32-3-323. Conversion of charter.** (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the department of administration.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with all the requirements of

the jurisdiction under which it was originally chartered and the requirements of the department and file proof of compliance with the department.

History: En. 14-667 by Sec. 67, Ch. 38, L. 1975; R.C.M. 1947, 14-667; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 93, Ch. 483, L. 2001; amd. Sec. 20, Ch. 237, L. 2003.

**32-3-401. General powers.** A credit union may:

- (1) make contracts as provided for in this chapter;
- (2) sue and be sued;
- (3) adopt and use a common seal and alter the seal;
- (4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) receive savings from its members in the form of shares or special-purpose thrift accounts;
- (7) lend its funds to its members as hereinafter provided;
- (8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;
- (9) discount and sell any eligible obligations, subject to rules prescribed by the department of administration;
- (10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the department;
- (11) invest surplus funds as provided in this chapter;
- (12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;
- (13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;
- (14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;
- (15) declare dividends and pay interest refunds to borrowers as provided in this chapter;
- (16) collect, receive, and disburse money in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for the services;
- (17) perform tasks and missions that are requested by the federal government or this state or any agency or political subdivision of the federal government or this state, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to regulations prescribed by the department;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations prescribed by the department;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of the accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision of the federal government or this state.

History: En. 14-613 by Sec. 13, Ch. 38, L. 1975; R.C.M. 1947, 14-613; amd. Sec. 3, Ch. 522, L. 1985; amd. Sec. 21, Ch. 237, L. 2003.

**32-3-402. Incidental powers.** A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state, including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38, L. 1975; R.C.M. 1947, 14-614.

**32-3-403. Election or appointment of officials.** (1) The credit union must be directed by a board, consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for terms that the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for terms that the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors.

(3) As provided in the bylaws, the board of directors shall appoint or the members shall elect a credit committee, consisting of an odd number of at least three members, for terms that the bylaws provide. In lieu of a credit committee,

the bylaws may provide that the board of directors shall appoint a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38, L. 1975; R.C.M. 1947, 14-622; amd. Sec. 4, Ch. 522, L. 1985; amd. Sec. 3, Ch. 25, L. 2001; amd. Sec. 22, Ch. 237, L. 2003.

**32-3-404. Record of board and committee members.** Within 30 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union must be filed with the department of administration on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38, L. 1975; R.C.M. 1947, 14-623; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 94, Ch. 483, L. 2001; amd. Sec. 23, Ch. 237, L. 2003.

**32-3-405. Vacancies.** The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38, L. 1975; R.C.M. 1947, 14-624.

**32-3-406. Compensation of officials.** No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident, and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38, L. 1975; R.C.M. 1947, 14-625.

**32-3-407. Conflicts of interest.** No director, committee member, officer, agent, or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: En. 14-626 by Sec. 26, Ch. 38, L. 1975; R.C.M. 1947, 14-626.

**32-3-408. Executive officers.** (1) At their next meeting following each annual meeting of the members, the directors shall elect from their own number:

- (a) a presiding officer of the board;
- (b) one or more vice presiding officers of the board;
- (c) a treasurer; and
- (d) a secretary.

- (2) The treasurer and the secretary may be the same individual.
- (3) The persons so elected must be the executive officers of the corporation.
- (4) The terms of the officers must be 1 year or until their successors are chosen and have duly qualified.
- (5) The duties of the officers must be prescribed in the bylaws.
- (6) The board of directors may employ an officer in charge of operations, whose title must be either president or general manager or president and general manager, or the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

History: En. 14-627 by Sec. 27, Ch. 38, L. 1975; R.C.M. 1947, 14-627; amd. Sec. 24, Ch. 237, L. 2003.

**32-3-409. Authority of directors.** The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

History: En. 14-628 by Sec. 28, Ch. 38, L. 1975; R.C.M. 1947, 14-628.

**32-3-410. Executive committee.** From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

History: En. 14-629 by Sec. 29, Ch. 38, L. 1975; R.C.M. 1947, 14-629.

**32-3-411. Meetings of board of directors and committees.** (1) Either the board of directors or the executive committee shall meet each month. The board of directors or the executive committee may meet at other times as necessary.

(2) Unless specifically prohibited by the bylaws, directors and members of the supervisory committee or credit committee may participate in and act at any meeting of the board or the supervisory or credit committee through the use of communications equipment that enables all persons participating in the meeting to communicate with each other. Participation in the meeting in this manner constitutes attendance.

(3) Unless specifically prohibited by the bylaws, any action required by this chapter to be taken at a meeting of the board of directors or a committee or any other action that may be taken at a meeting of the board of directors or a committee may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the directors of the board or the committee members entitled to vote with respect to the subject matter of the action taken. The written consents must be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more board directors or committee members. All the approvals evidencing the consent

must be delivered to the secretary to be filed in the corporate records of the credit union. The action taken is effective when all the directors or committee members have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors or committee members has the same effect as a unanimous vote and may be stated as a unanimous vote in any document filed with the department under this chapter.

History: En. 14-630 by Sec. 30, Ch. 38, L. 1975; R.C.M. 1947, 14-630; amd. Sec. 25, Ch. 237, L. 2003.

**32-3-412. Duties of directors.** The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under conditions prescribed by the board. A record of a membership officer's approval or denial of membership must be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the department of administration, to protect the credit union against losses caused by occurrences covered by the bond such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on classes of loans and under conditions prescribed by the board;

(4) fix from time to time the maximum amount that may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares that may be owned by a member, the limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

- (11) designate a depository or depositories for the funds of the credit union;
- (12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;
- (13) appoint any special committees considered necessary; and
- (14) perform other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

History: En. 14-631 by Sec. 31, Ch. 38, L. 1975; amd. Sec. 45, Ch. 359, L. 1977; R.C.M. 1947, 14-631; amd. Sec. 5, Ch. 522, L. 1985; amd. Sec. 26, Ch. 237, L. 2003.

**32-3-413. Authority of credit committee.** The credit committee shall have the general supervision of all loans to members.

History: En. 14-632 by Sec. 32, Ch. 38, L. 1975; R.C.M. 1947, 14-632.

**32-3-414. Meeting of credit committee -- loan approval.** The credit committee shall meet as often as the business of the credit union requires to consider applications for loans. A loan may not be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. However, credit union loan policies may provide that the credit committee may approve loans by category of size or type.

History: En. 14-633 by Sec. 33, Ch. 38, L. 1975; R.C.M. 1947, 14-633; amd. Sec. 27, Ch. 237, L. 2003.

**32-3-415. Loan officers.** (1) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38, L. 1975; R.C.M. 1947, 14-634.

**32-3-416. Credit manager.** The credit committee may be dispensed with and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38, L. 1975; R.C.M. 1947, 14-635.

**32-3-417. Audits.** (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. The board or committee shall make or cause to be made any supplementary audits or examinations as it considers necessary or as are required by the department of administration or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years.

History: En. 14-636 by Sec. 36, Ch. 38, L. 1975; R.C.M. 1947, 14-636; amd. Sec. 6, Ch. 522, L. 1985; amd. Sec. 28, Ch. 237, L. 2003.

**32-3-418. Suspension and removal of officials.** (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than 7 or more than 21 days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this chapter, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38, L. 1975; R.C.M. 1947, 14-637.

**32-3-419. Calling of special meeting.** The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

History: En. 14-638 by Sec. 38, Ch. 38, L. 1975; R.C.M. 1947, 14-638.

**32-3-501. Shares.** (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in a manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

(4) This chapter does not restrict or prohibit the issuance of shares in any type of account described in Title 72, chapter 6, part 2. However, the party, the beneficiary, or the agent of an account may not vote, obtain loans, hold office, or

be required to pay an entrance or membership fee unless the party, beneficiary, or agent is a member of the credit union.

History: En. 14-639 by Sec. 39, Ch. 38, L. 1975; R.C.M. 1947, 14-639; amd. Sec. 132, Ch. 494, L. 1993.

**32-3-502. Dividends.** At the intervals and for the periods that the board of directors authorizes and after providing for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at the rates and upon the classes of shares that the board determines. The dividends must be paid on all shares according to any method of calculation allowed by law.

History: En. 14-640 by Sec. 40, Ch. 38, L. 1975; R.C.M. 1947, 14-640; amd. Sec. 1, Ch. 365, L. 1997; amd. Sec. 4, Ch. 25, L. 2001.

**32-3-503. Thrift accounts.** Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

History: En. 14-641 by Sec. 41, Ch. 38, L. 1975; R.C.M. 1947, 14-641.

**32-3-504. Minors' accounts.** Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: En. 14-642 by Sec. 42, Ch. 38, L. 1975; R.C.M. 1947, 14-642.

**32-3-505. Joint accounts.** (1) A member may designate any person or persons to hold shares and thrift club accounts with the member in joint tenancy with the right of survivorship, as a tenant in common, or under any other form of multiple-party account ownership permitted by law and allowed by the credit union. A joint tenant, unless a member in the joint tenant's own right, may not be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. If a credit union allows more than one joint owner to seek credit union membership through a joint account, the joint account must contain a membership share for each joint owner seeking membership.

(2) Payment of part or all of a joint account to any of the joint owners, to the extent of the payment, discharges the liability to all joint owners.

History: En. 14-643 by Sec. 43, Ch. 38, L. 1975; R.C.M. 1947, 14-643; amd. Sec. 29, Ch. 237, L. 2003.

**32-3-506.** Shares in trust. (1) Shares may be issued in the name of a revocable trust if the trustor is a member, or shares may be issued in the name of an irrevocable trust if either the trustor or the beneficiary is a member. A beneficiary, unless a member in the beneficiary's own right, may not be

permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of the shares described in subsection (1) to a trustee, to the extent of the payment, discharges the liability of the credit union to the trustee and the beneficiary, and the credit union is not obligated to see to the application of the payment.

History: En. 14-644 by Sec. 44, Ch. 38, L. 1975; R.C.M. 1947, 14-644; amd. Sec. 30, Ch. 237, L. 2003.

**32-3-507. Liens.** The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint, or trust account for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38, L. 1975; R.C.M. 1947, 14-645.

**32-3-508. Dormant accounts.** When administering member accounts that are dormant, unclaimed, or abandoned, a credit union shall comply with the Uniform Unclaimed Property Act provided for in Title 70, chapter 9, part 8.

History: En. 14-646 by Sec. 46, Ch. 38, L. 1975; R.C.M. 1947, 14-646; amd. Sec. 31, Ch. 237, L. 2003.

**32-3-509. Reduction in shares.** (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: En. 14-647 by Sec. 47, Ch. 38, L. 1975; R.C.M. 1947, 14-647.

**32-3-510. Withdrawals.** Shares may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

History: En. Sec. 8, Ch. 522, L. 1985.

**32-3-601. Loans -- purposes, terms, and conditions.** A credit union may loan to members for the purposes and under the conditions as prescribed by the board of directors. The board of directors shall establish written policies with respect to granting loans and extending lines of credit. The policies must include terms, conditions, and acceptable forms of security.

History: En. 14-648 by Sec. 48, Ch. 38, L. 1975; R.C.M. 1947, 14-648; amd. Sec. 6, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 32, Ch. 237, L. 2003.

**32-3-602. Loan application.** Every application for a loan must be made upon a form prescribed by the credit union. The application must state the security, if any, offered. Each loan must be evidenced by a written document or electronic data capable of being converted into written form.

History: En. 14-649 by Sec. 49, Ch. 38, L. 1975; R.C.M. 1947, 14-649; amd. Sec. 5, Ch. 25, L. 2001; amd. Sec. 33, Ch. 237, L. 2003.

**32-3-603. Loan limit.** No loan shall be made to any member in an aggregate amount in excess of 10% of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38, L. 1975; R.C.M. 1947, 14-650.

**32-3-604. Security.** In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor or pledge of shares, in a manner consistent with the laws of this state, must be considered security within the meaning of this chapter. The adequacy of any security is subject to the lending policies established by the board of directors.

History: En. 14-651 by Sec. 51, Ch. 38, L. 1975; R.C.M. 1947, 14-651; amd. Sec. 34, Ch. 237, L. 2003.

**32-3-605. Installments.** A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38, L. 1975; R.C.M. 1947, 14-652.

**32-3-606. Line of credit.** Upon their own motion or upon application by a member, the credit committee or credit manager may approve a line of credit in advance, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38, L. 1975; R.C.M. 1947, 14-653.

**32-3-607. Other loan programs.** (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

History: En. 14-654 by Sec. 54, Ch. 38, L. 1975; R.C.M. 1947, 14-654.

**32-3-608. Loans to officials.** (1) A credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees if:

(a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers, except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration; and

(b) the loan or aggregate of loans to any one director or committee member that exceeds \$20,000 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, the credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members. If the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds \$20,000, a report to the board of directors is required.

History: En. 14-655 by Sec. 55, Ch. 38, L. 1975; R.C.M. 1947, 14-655; amd. Sec. 2, Ch. 365, L. 1997; amd. Sec. 35, Ch. 237, L. 2003.

**32-3-609. Insurance for members.** A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

History: En. 14-656 by Sec. 56, Ch. 38, L. 1975; R.C.M. 1947, 14-656.

Authorization of insurers -- certificate of authority required, 33-2-101.

**32-3-610. Liability insurance for officers.** A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: En. 14-657 by Sec. 57, Ch. 38, L. 1975; R.C.M. 1947, 14-657.

**32-3-611. Share insurance.** (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the department of administration.

(2) A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the department.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) Subject to the provisions of 32-2-207, the department shall make available reports of condition and examination reports to the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of the national credit union administration or insurance plan official. The department may appoint the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38, L. 1975; R.C.M. 1947, 14-658; amd. Sec. 7, Ch. 36, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 7, Ch. 522, L. 1985; amd. Sec. 95, Ch. 483, L. 2001; amd. Sec. 36, Ch. 237, L. 2003.

**32-3-701. Investment of funds.** Funds not used in loans to members may be invested in:

(1) securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) loans to or in shares or deposits of other credit unions;

(5) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to 2% of the assets of the credit union.

History: En. 14-659 by Sec. 59, Ch. 38, L. 1975; R.C.M. 1947, 14-659.

**32-3-702.** Maintenance of regular reserve account. The department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. The department may rely on standards adopted by the national credit union administration (NCUA) in making any determination to require a credit union to establish a regular reserve account.

History: En. 14-660 by Sec. 60, Ch. 38, L. 1975; R.C.M. 1947, 14-660; amd. Sec. 2, Ch. 64, L. 2003; amd. Sec. 37, Ch. 237, L. 2003.

**32-3-703. Use of regular reserve account.** The regular reserve account belongs to the credit union and must be used to meet losses including, with prior approval of the department of administration, losses from the sale of investments or securities. The regular reserve account may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the department.

History: En. 14-661 by Sec. 61, Ch. 38, L. 1975; R.C.M. 1947, 14-661; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 219, L. 1983; amd. Sec. 96, Ch. 483, L. 2001; amd. Sec. 38, Ch. 237, L. 2003.

**32-3-704. Repealed.** Sec. 3, Ch. 64, L. 2003; sec. 40, Ch. 237, L. 2003.

History: En. 14-662 by Sec. 62, Ch. 38, L. 1975; R.C.M. 1947, 14-662; amd. Sec. 1, Ch. 4, L. 1991; amd. Sec. 42, Ch. 18, L. 1995.

**32-3-705. Special reserves.** In addition to the regular reserve account, special reserves to protect the interest of members must be established:

- (1) when required by regulation; or
- (2) when found by the board of directors of the credit union or by the department of administration to be necessary.

History: En. 14-663 by Sec. 63, Ch. 38, L. 1975; R.C.M. 1947, 14-663; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 97, Ch. 483, L. 2001; amd. Sec. 39, Ch. 237, L. 2003.

**32-3-801. Organization.** A corporate credit union may be organized and operated under this chapter and is subject to all provisions not inconsistent with this part. The credit union shall use the term "corporate" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38, L. 1975; R.C.M. 1947, 14-668; amd. Sec. 1, Ch. 66, L. 1993; amd. Sec. 43, Ch. 18, L. 1995.

**32-3-802. Purpose -- membership.** (1) A corporate credit union must be operated primarily for the purpose of serving other credit unions.

(2) Membership in a corporate credit union must include credit unions organized and operating under this chapter or under any other credit union law.

(3) Membership may also include:

(a) officers, directors, committee members, and employees of credit unions; or

(b) organizations and associations of those persons or organizations enumerated in subsections (2) and (3)(a).

(4) The membership of a corporate credit union may not include more than seven natural persons as described in subsection (3)(a).

History: En. 14-669 by Sec. 69, Ch. 38, L. 1975; R.C.M. 1947, 14-669; amd. Sec. 2, Ch. 66, L. 1993.

General powers of credit unions, 32-3-401.

**32-3-803. Voting representative -- conflict of interest.** (1) Each credit union that is a member of a corporate credit union may designate one person to be its voting representative in the corporate credit union. The person must be designated by the board of directors of the member credit union. The voting representative is eligible to hold office in the corporate credit union as if the person were a member of the corporate credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations.

History: En. 14-670 by Sec. 70, Ch. 38, L. 1975; R.C.M. 1947, 14-670; amd. Sec. 3, Ch. 66, L. 1993; amd. Sec. 140, Ch. 42, L. 1997; amd. Sec. 3, Ch. 365, L. 1997.

**32-3-804. Additional rights and powers -- department rules.** (1) Except as limited by this part and rules adopted pursuant to this part, a corporate credit union has all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this part.

(2) A corporate credit union may, as permitted by rules of the department, make loans to other credit unions and provide correspondent services and other financial services to other credit unions.

(3) A corporate credit union may, as permitted by rules of the department, invest in and grant loans to associations of credit unions, central

funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A corporate credit union may, as permitted by rules of the department, borrow and accept money from any source and issue notes or debentures.

(5) A corporate credit union may, as permitted by rules of the department, make reasonable and prudent investments.

(6) The department shall adopt rules governing corporate credit union loans, borrowing, investments, strategic planning, funds management, capital goals, and services. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(7) A corporate credit union may issue membership capital accounts as provided in 32-3-805.

(8) A corporate credit union may issue paid-in capital and nonmember paid-in capital as provided in 32-3-810.

(9) A corporate credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act.

History: En. 14-671 by Sec. 71, Ch. 38, L. 1975; amd. Sec. 1, Ch. 111, L. 1977; R.C.M. 1947, 14-671; amd. Sec. 1, Ch. 233, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 4, Ch. 66, L. 1993; amd. Sec. 4, Ch. 365, L. 1997.

**32-3-805. Membership capital accounts.** (1) A corporate credit union may issue membership capital accounts to members that are available to cover losses that exceed reserves and undivided earnings and paid-in capital.

(2) (a) For purposes of this section, "membership capital account" means a share, deposit, term certificate, adjusted balance, or other account that:

- (i) is established, at a minimum, as a 3-year notice account;
- (ii) is limited to members;
- (iii) is not subject to share insurance coverage by the national credit union share insurance fund or other deposit insurers; and
- (iv) in the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the national credit union share insurance fund.

(b) Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen with no annual adjustment until the conclusion of the notice period, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged.

(c) Upon notification of intent to withdraw, the amount of the account on notice that may be considered membership capital is reduced by a constant monthly amortization that ensures that the recognition of membership capital is fully amortized at the end of the notice period.

(d) The full balance of a membership capital account that has been placed on notice, not just the remaining nonamortized portion, is available to absorb losses in excess of reserves and undivided earnings and of paid-in capital until the funds are released by the corporate credit union at the conclusion of the notice period.

(3) A membership capital account may not be used to pledge borrowings.

(4) Corporate credit unions that issue membership capital accounts shall disclose the terms and conditions of the account when it is opened and at least annually thereafter.

History: En. Sec. 5, Ch. 66, L. 1993; amd. Sec. 5, Ch. 365, L. 1997.

**32-3-806. Fixed assets -- department rules.** (1) A corporate credit union may not invest in fixed assets if the aggregate of those investments would exceed 15% of capital, unless the credit union receives prior written approval from the department and the national credit union administration board.

(2) The department shall adopt rules for the administration of subsection (1) and for governing ownership of fixed assets by a corporate credit union. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

History: En. Sec. 6, Ch. 66, L. 1993.

**32-3-807. Corporate reserves -- department rules.** (1) A corporate credit union shall maintain a minimum capital to assets ratio according to rules adopted by the department in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(2) The department shall adopt rules for the administration of subsection (1).

History: En. Sec. 7, Ch. 66, L. 1993; amd. Sec. 6, Ch. 365, L. 1997.

**32-3-808. Annual audit.** (1) The supervisory committee of a corporate credit union shall require an annual opinion audit to be made by an independent, licensed certified public accountant and shall submit the audit report to the board of directors. A summary of the audit report must be submitted to the membership at the next annual meeting.

(2) The auditor's workpapers must be made available for review by state and federal regulatory examiners during any examination conducted by the examiners.

(3) A copy of the audit report and reportable conditions letter, otherwise known as the management letter, must be submitted to the department and the national credit union administration within 30 days after receipt by the board of directors.

History: En. Sec. 8, Ch. 66, L. 1993.

**32-3-809. Contracts and written agreements.** Services, facilities, personnel, or equipment shared with any party must be supported by a written contract or agreement that specifies the duties and responsibilities of each party and that fully supports and documents the allocation of service fees and expenses.

History: En. Sec. 9, Ch. 66, L. 1993.

**32-3-810. Paid-in capital defined -- authorized.** (1) "Paid-in capital" means accounts or other interests of a corporate credit union that:

- (a) may not exceed reserves and undivided earnings;
- (b) may include both member paid-in capital and nonmember paid-in capital;
- (c) are available to cover losses that exceed reserves and undivided earnings;
- (d) are not insured by the national credit union share insurance fund (NCUSIF) or other share or deposit insurers;
- (e) are callable only at the option of the corporate credit union and only if the corporate credit union meets its minimum level of required capital after the funds are called; and
- (f) in the event of liquidation of the corporate credit union, are payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to the shareholders, the NCUSIF, and membership capital holders.

- (2) (a) A corporate credit union may issue paid-in capital to its members.
- (b) Member paid-in capital must have an initial maturity of 20 years.
- (c) A corporate credit union may not condition membership, services or prices for services on a member's ownership of paid-in capital.

(d) When a paid-in capital instrument has a remaining maturity of 5 years, the amount of the instrument that may be considered paid-in capital for the purposes of this part is reduced by a constant monthly amortization that ensures the recognition of paid-in capital is fully amortized when the instrument has a remaining maturity of 3 years.

(e) The terms and conditions of any member paid-in capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and at least annually thereafter.

(3) A corporate credit union may issue nonmember paid-in capital accounts. However, the corporate credit union may only issue the accounts after approval by the department and the national credit union administration (NCUA), and following an evaluation by the NCUA of the strategic purpose and financial impact of issuing the accounts, the corporate credit union's financial condition and management capabilities, the maturity and capital amortization schedules of the paid-in capital instrument; and the participation, voting, acceleration, redemption, or other rights of the holder.

History: En. Sec. 9, Ch. 365, L. 1997.

**32-3-901. Taxation.** All credit unions organized under this or any other credit union law shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: En. 14-672 by Sec. 72, Ch. 38, L. 1975; R.C.M. 1947, 14-672.

**32-3-902. Stock transfer taxes.** The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38, L. 1975; R.C.M. 1947, 14-673.

**32-3-903. Effect of participation in government programs.** The participation by a credit union in any government program providing unemployment, social security, old-age pension, or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38, L. 1975; R.C.M. 1947, 14-674.